

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 689 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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STATE OF GUJARAT

Versus

KIRTILAL MANILAL THAKKAR

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Appearance:

Mr. K.P. Raval, A.P.P. for appellant.

MR RAVI R TRIPATHI for Respondent.

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CORAM : MR.JUSTICE N.J.PANDYA

Date of decision: 06/10/97

ORAL JUDGEMENT

Appeal admitted.

In response to the notice, Mr. Ravi Tripathi appears for accused/respondent. With the consent of the parties, the matter is taken up for final hearing today.

The accused/respondent having admitted the guilt, merit of the case is not required to be gone into. The

solitary law point involved is whether benefit of probation as granted by the learned Special Judge, Banaskantha at Palanpur could have been given to the accused/respondent or not.

Obviously it could not have been given. Section 7 of the Essential Commodities Act, 1955 under which the accused was tried prescribes three months' minimum sentence and this court had drawn attention of the magistracy that where there is minimum sentence prescribed under the statute if the accused is out to admit guilt it is the duty of the magistrate to draw the attention of the accused that on his admission, the magistrate will have to impose minimum sentence. After drawing attention of the accused as to the provisions of minimum sentence under the statute where minimum sentence is prescribed alone the plea of guilt should be accepted by the learned Magistrate. What is good for the learned Magistrate as stated above is equally good for the Special Judges under the Essential Commodities Act under the provisions of Section 12 AA of the said Act.

So far as grant of probation is concerned, no doubt, looking to the extent of sentence under Section 7, there is power for granting probation under the Probation of Offenders Act. The idea of minimum sentence and grant of probation however, obviously cannot go together. The benefit of probation can be given where discretion is left to the court for first instance imposing the sentence either at the end of the trial on merits or on the basis of plea of guilty where instead of imposing sentence the benefit of probation can be given or not.

Once the minimum sentence is prescribed, obviously, there cannot be said to be any discretion left to the trial court which would permit it to go for exercise of its discretion for grant of probation. In the statute like the Essential Commodities Act provisions of Section 7 was to be borne in mind where after providing for minimum imprisonment of three months proviso is given to exercise discretionary power for imposing sentence of imprisonment for a term of less than three months and yet the insistence is upon sentence of imprisonment.

Obviously, therefore, there is no question of there being any discretion left to the trial court as to imposing sentence on one hand and granting benefit of probation on the other. Minimum sentence is for three months or less than that for which reasons to be recorded is the requirement of the statute. Against the statutory imperative even if the trial court has justifiable

reasons for granting probation it cannot be granted keeping in mind the letter and spirit of the statute.

The trial court was, therefore, totally in error when it decided to grant the benefit of probation. Even reasons are not assigned keeping in mind the requirement of minimum sentence coupled with the proviso to sub-section (1) of Section 7 of the Essential Commodities Act. Obviously, therefore, the said order cannot be sustained.

So far as the appeal is concerned, looking to the date of the offence which is between 14.1.1988 and 21.8.1988 and after the event licence under the Essential Commodities Act for running fair-price shop has also been cancelled and that the accused/respondent has stopped running the business and instead opted for service in a private firm, in my opinion, after lapse of about 9 years and 8 months it will not be proper to impose the minimum sentence. Instead of that he is sentenced till rising of the court, that is to say, upto 4.45 P.M. today and shall also pay fine of Rs.2,000/- in default, to undergo simple imprisonment for one month. The registry is directed to accept Rs.2,000/- payable by the accused/respondent as fine imposed under this order.

Appeal is accordingly partly allowed.